

**N.D.A.G. Letter to Klein (Aug. 2, 1988)**

August 2, 1988

Mr. Jeffrey G. Klein  
Steele County State's Attorney  
P.O. Box 235  
Finley, ND 58230

Dear Mr. Klein:

Thank you for your letter of July 18, 1988, concerning a township in Steele County and arrangements for fire protection of the township.

The three questions posed in your letter concern N.D.C.C. § 18-06-10 which states as follows:

18-06-10. Township may contract for prevention and extinguishment of fires. The electors of each township at the annual township meeting may authorize and empower the board of township supervisors to levy, not exceeding the limitation in subsection 1 of section 57-15-20.2, and provide by contract or otherwise, for the prevention of, protection from, and extinguishment of fires within the townships, in such manner as the board of supervisors shall deem advisable.

When so authorized, the supervisors may enter into a five-year contract and levy, not exceeding the limitation in subsection 1 of section 57-15-20.2, for the payment of the services obtained under such contract. Such contract may be renewed or renegotiated for another five-year period upon authorization by the electors of the township at the annual meeting.

Your first question concerns a township which has followed the procedure outlined in N.D.C.C. § 18-06-10. The electors of the township at the annual township meeting have empowered the board of township supervisors to levy one mill for fire protection purposes. You inquire whether the township can now remove the levy that they already authorized earlier this year.

There are no specific statutes in N.D.C.C. ch. 18-06 concerning the manner in which the township levy for fire protection purposes may be removed before the next annual meeting occurs. However, other statutes govern how that levy may be removed.

North Dakota law provides that taxes levied or voted upon by any township must be certified to the county auditor immediately following the action of the governing body or within ten days thereafter. N.D.C.C. § 57-15-32. Furthermore, North Dakota law prohibits a county auditor from accepting a certification of taxes or amended budget after the tenth

day of October of each year if such certification or amendment results in a change in the amount of tax levied. N.D.C.C. § 57-15-31.1. The statute further states that the current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared. Id.

It is assumed that the current desire of the township to remove the one mill levy provided for by N.D.C.C. § 18-06-10 would result in a change in property taxes for residents of that township. As such, N.D.C.C. § 57-15-31.1 provides for an amended budget and a change in certification of taxes no later than October 10th of each year. Thus, it appears that the township may take such action to amend its budget and its certification of taxes previously filed with the county auditor up to the tenth day of October.

Having concluded that amending the budget is permissible depending upon the time constraints involved, we must now determine the manner in which such township action may occur.

N.D.C.C. § 18-06-10 provides that the action of the township electors to provide for the fire protection levy must occur at the annual township meeting. As previously noted, there is no discussion in this or other statutes concerning the manner in which that levy may be rescinded within the same budget year.

N.D.C.C. § 58-04-02 states that a special township meeting may be held for the purpose "of transacting other lawful township business." As previously noted, N.D.C.C. § 57-15-31.1 authorizes a township to amend its budget and certification of taxes up to the tenth day of October. Clearly, a desire to meet with the township electors to discuss the possibility of amending the budget and the certification of taxes pursuant to this statutory authority would constitute "lawful township business." As such, a special township meeting may be held for this purpose pursuant to N.D.C.C. § 58-04-02.

One final note should be mentioned concerning any attempt to amend the budget and the certification of taxes. If there have been contractual obligations undertaken by the township pursuant to N.D.C.C. § 18-06-10, those obligations should be reviewed before taking any action which might result in the inability of the township to continue satisfying those obligations.

Your second question concerns a township which has made use of the one mill levy provisions of N.D.C.C. § 18-06-10. Within that township, there are four sections which have apparently made other arrangements for fire protection services. The inquiry is whether the one mill levy voted upon and approved by the township electors pursuant to N.D.C.C. § 18-06-10 may remain applicable to those four township sections but removed for the rest of the township.

A similar issue was presented to this office on March 9, 1962, by the Grand Forks County state's attorney. In that situation, a township was contemplating authorizing the fire protection levy provisions of N.D.C.C. § 18-06-10 despite the fact that portions of the township were already included within a rural fire protection district. The issue was

whether it was permissible to utilize N.D.C.C. § 18-06-10 to take monies out of the township's general fund to pay for fire protection services when a portion of the township was in an existing fire protection district resulting in some persons paying double for fire protection services.

In response to this inquiry, this office stated the following:

[W]e believe the board may contract under the provisions of Section 18-06-10 despite the fact that certain portions of the township are included within a rural fire protection district. We would agree, therefore, with your conclusion that the township would have to contract for protection for the entire township since the finances for such protection would be derived from taxes levied throughout the entire township.

It would appear that in this situation, certain portions of the townships would be assessed twice for fire protection . . . once by the township and once by the rural fire protection district. They are, however, separate entities and our statutes do not contain any provision prohibiting this procedure.

Letter to Grand Forks County State's Attorney Carlton Nelson, March 9, 1962, at 2.

I believe the conclusion reached in 1962 concerning the Grand Forks County situation is applicable to the Steele County situation. There are no statutes prohibiting separate entities providing fire protection services to the same persons. I fully acknowledge and realize that some persons will be paying twice for fire protection services. Nonetheless, this situation has existed at least since 1962 and apparently has not resulted in any legislative change prohibiting such an arrangement.

Thus, it is my opinion that the tax levy provided for by N.D.C.C. § 18-06-10 is to be applied throughout the entire township regardless of other fire protection arrangements or contracts and in spite of the possibility of persons being taxed more than once for fire protection services.

Your final question concerns the validity of the one mill levy pursuant to N.D.C.C. § 18-06-10 where the township supervisors have not in fact entered into a five-year contract providing for fire protection services.

There are two paragraphs in N.D.C.C. § 18-06-10. The first paragraph provides the township electors with the authority to authorize and empower the board of township supervisors to levy the one mill tax "and provide by contract or otherwise" for the prevention of fires within the townships "in such manner as the board of supervisors shall deem advisable." The second paragraph of the statute states that when so authorized, "the supervisors may enter into a five-year contract and levy" for the payment of fire protection services obtained under such contract. (Emphasis supplied.)

The two paragraphs in N.D.C.C. § 18-06-10 are discussing two separate matters although

they are related to township fire protection. In the first paragraph, township electors are authorized to empower the board of township supervisors to make the appropriate mill levy for fire protection services, such services to be provided "by contract or otherwise." In the second paragraph, the township's electors may authorize the supervisors to enter into a five-year contract and mill levy for fire protection services. The contract may be renewed or renegotiated for an additional five-year period upon further authorization by the township electors.

Your letter suggests that the township's electors in this particular case used the procedure set forth in the second paragraph of the statute. If, however, the first paragraph were utilized by the township electors, it is obvious that there is no requirement for any fire protection contract as the statute clearly allows the board of township supervisors to provide for fire protection services by contract "or otherwise" in such manner "as the board of supervisors shall deem advisable."

On the other hand, if the second paragraph of this statute is followed, a five-year contract and mill levy must occur. Where the contract does not occur as part of the mill levy, there would be some doubt as to the validity of the mill levy because of the noncompliance with the statutory requirements. If this is indeed the situation in this particular county, resort to the amendment of the budget process previously described at N.D.C.C. § 57-15-31.1 may be appropriate.

We hope this information is helpful to you and are available for further discussion if it is needed.

Sincerely,

Nicholas J. Spaeth

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